IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 59 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH-TAX

Versus

PRATIMA B TOLAT

Appearance:

1. WEALTH TAX REFERENCE No. 59 of 1991
MR MANISH R BHATT for Petitioner No. 1
MR HM TALATI for theespondent No.1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 23/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law has been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A', under the provisions of sec. 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as 'the Act') :

"Whether, in law and on facts, the Appellate Tribunal is right in quashing the order made by the Commissioner of Wealth-tax under section 25(2) of the W.T. Act, 1957?"

2. Senior Standing Counsel Shri M.R. Bhatt has appeared for the applicant revenue whereas learned advocate Shri H.M. Talati has appeared for the respondent assessee.

3. It has been brought to our notice that during the pendency of the present reference, some development has taken place and therefore it would not be necessary to answer the questions referred to us.

4. The facts giving rise to the present reference, including the development which took place during the pendency of the reference, are as under.

5. The Assessing Officer did not initiate penalty proceedings during the assessment proceedings and, therefore, the order passed by the Assessing Officer dated 27.3.86 was taken in revision by the Commissioner of Wealth-tax. The Commissioner of Wealth-tax ultimately directed the Assessing Officer to initiate penalty proceedings, but the said order dated 9.3.88 had been challenged by the assessee by filing an appeal before the Tribunal.

6. The Tribunal held that the Commissioner of Wealth-tax was not justified in giving direction to the Assessing Officer to initiate penalty proceedings. The question of law, which has been referred to hereinabove, has arisen from the said order of the Tribunal.

7. The learned advocates appearing for the parties have submitted that during the pendency of the present proceedings, the order dated 27.3.86 passed by the Wealth-tax Officer had been challenged and in an appeal filed before the Commissioner of Wealth-tax against the

said order, the said order of assessment had been set aside and the order passed by the appellate authority has become final.

8. Looking to the fact that the order, which was against the assessee, has been now set aside, there would not be any question with regard to initiation of penalty proceedings and, therefore, in our opinion, this reference has become academic.

9. Looking to the facts of the case, we decline to answer the question referred to us. The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(A.M.Kapadia, J.)

(hn)